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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,108	07/23/2001	Gary Dean LaVon	6567CR	4986
27752	7590	06/29/2004	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			STEPHENS, JACQUELINE F	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/911,108

Applicant(s)

LAVON ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/2/02, 2/27/04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>IDS 1/15/04</u> .                      |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Species 1 – Figure 7, which is designated by claims 1-18 in the reply filed on 4/14/04 is acknowledged. The traversal is on the ground(s) that the application contains four species and could be searched and examined without serious burden. This is not found persuasive because although the species are classifiable together, each subject can be shown to have formed a separate subject for inventive effort. Separate status in the art is evidenced by a separate field of search, for example, species 1 contains a pocket where the absorbent is removable and a new one is inserted as needed – class 604 subclass 385.14. Species 2 contains an absorbent enclosed in an envelope that is completely removable – class 604 subclass 385.19. The requirement is still deemed proper and is therefore made FINAL.

### ***Specification***

2. The following is a quotation of 37 CFR 1.71(a)-(c):

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

(b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.

(c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

3. The specification is objected to under 37 CFR 1.71 because the specification fails to adequately teach how to make and/or use the invention. The claims recite an absorbent core having a crotch region, the crotch region having an absorbent capacity of not more than about 40% of a total absorbent capacity of the absorbent core, a removable absorbent core having a Saline Flow Conductivity value of at least  $30 \times 10^{-7}$   $\text{cm}^3 \text{ sec/g}$ , a Performance Under Pressure capacity value of at least 23 g/g under a confining pressure of about 0.7 psi, and absorbent gelling material having a gel volume of at least about 20 g/g. The claims further recite a non-removable absorbent core component having a 30 minute Vertical Wicking Height of at least about 5 cm, or wherein the material comprises an open-celled foam having a surface area per foam volume of at least about  $0.025 \text{ m}^2/\text{cc}$ . These limitations encompass any absorbent structure composition that has abovementioned abilities. While the specification provides broad guidance as to the materials used, see specification pages 8, 10, 11, and 20-24, no specific working example is given to provide essential enabling information. Without such information, of ordinary skill in the art could not predict which materials, combination of materials, or combinations of structure would be needed to produce the desired end product. Accordingly, one of ordinary skill cannot practice the invention without undue experimentation.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-18 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

6. Claims 1, 2, 5-8, 12, and 13 fail to teach one of ordinary skill how to make and/or use the invention. The disclosure teaches a broad range of materials for the claimed invention, but fails to teach one of ordinary skill in the art the exact materials needed or the exact method of forming the structure to provide the claimed test results. Without this disclosure, one of ordinary skill cannot practice the invention without undue experimentation because of the number of operational parameters in the process and uncertainty as to the materials for forming the absorbent composite.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being obvious over Lavon et al. US Patent Application Publication 2004/0039361.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(I)(1) and § 706.02(I)(2).

10. With respect to claims 1 and 2, Lavon et al. discloses an absorbent core, which meets all these limitations (Abstract and paragraph 0084). However, Lavon does not disclose the absorbent core comprises a crotch region, of the absorbent core that has an absorbent capacity of not more than about 40% of a total absorbent capacity of the absorbent core. Lavon recognizes the materials of the absorbent core can be varied and this will affect the absorbent capacity in specific regions (paragraph 0006). Lavon, therefore recognizes the absorbent capacity is a result effective variable of the materials used to makeup the core. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Lavon with the claimed absorbent capacity in the crotch region, since discovering an optimum value of a result effective variable involves only routine skill in the art.

As to claims 3, 9 and 10, see paragraphs 0103 and 0106 and Figures 3 and 13.

As to claims 4 and 11, see paragraph 0095.

As to claims 12-15, Lavon incorporates by reference DesMarais et al. 5260345 (paragraph 0095) teaches a HIPE foam, which applicant's disclosure on page 14, lines 17-20 teaches provides the desired properties for requisite distribution properties for the absorbent core. When the structure recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not

the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980).

As to claim 16, see Figure 3.

As to claims 17-19, see Figure 3.

11. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavon in view of Goldman USPN 5599335. Lavon discloses the present invention substantially as claimed. Lavon discloses polymeric gelling materials (paragraph 0096), however, Lavon is silent as to the claimed characteristics of the polymeric gelling materials. As suggested in applicant's disclosure on page 22, lines 1-22, the polymeric gelling materials of Goldman provides the desired properties for storage material. When the structure recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980).



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703)305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens  
Examiner  
Art Unit 3761



June 25, 2004